

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

742L0509

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB 1248** - 02/10/2005

Introduced by: Representatives McLaughlin, Brunner, Frost, Hanks, Hennies, Jerke, Koistinen, Rausch, and Tornow and Senators Adelstein, Bogue, Duenwald, Duniphan, Hundstad, McNenny, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding money lenders.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 54-4-40 be amended to read as follows:

4 54-4-40. Any person who engages in the business of lending money shall apply for a license
5 as prescribed by §§ 54-4-36 to 54-4-63, inclusive. The applicant shall apply for a license under
6 oath on forms supplied by the division. The application shall contain the name of the applicant's
7 business, proof of surety bond, address of the business, the names and addresses of the partners,
8 members, officers, directors, or trustees, and other information ~~as required by the director by~~
9 ~~rule or order~~ may consider necessary. The applicant shall pay an original license fee as set by
10 rules of the commission promulgated pursuant to chapter 1-26 not to exceed one thousand
11 dollars. If the application of an existing licensee is for an additional location, the application
12 need only include the location and identity of the location manager, plus any changes from the
13 existing license, or such other information the director may consider necessary.

14 Section 2. That § 54-4-42 be amended to read as follows:



54-4-42. The applicant shall submit with the application for a license a bond in an amount not to exceed the total of ~~five~~ ten thousand dollars for the first license and ~~one~~ two thousand five hundred dollars for each additional license. The bond shall be satisfactory to the director and issued by a surety company qualified to do business as a surety in this state. The bond shall be in favor of this state for the use of this state and any person who has a cause of action under §§ 54-4-36 to 54-4-63, inclusive, against the licensee. The bond shall be conditioned on:

- (1) The licensee's faithful performance under §§ 54-4-36 to 54-4-63, inclusive, and any rules adopted pursuant to §§ 54-4-36 to 54-4-63, inclusive; and
- (2) The payment of any amounts that are due to the state or another person during the calendar year for which the bond is given.

The aggregate liability of a surety to all persons damaged by a licensee's violation of §§ 54-4-36 to 54-4-63, inclusive, may not exceed the amount of the bond.

Section 3. That § 54-4-43 be amended to read as follows:

54-4-43. The director shall investigate the facts ~~and, after~~ concerning the application. The director may review, either deny or and consider the relevant business records of the applicant and the competence, experience, integrity, and financial ability of any person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the business. If the director finds that the financial responsibility, financial condition, business experience, character, and general fitness of the applicant reasonably warrant the belief that the business will be conducted lawfully and fairly, the director may grant a license based on the findings.

Section 4. That § 54-4-45 be amended to read as follows:

54-4-45. ~~Any license shall be renewed~~ A license expires on July first. To renew a license, the licensee shall file for renewal by June fifteenth. The renewal application shall include a renewal fee not to exceed one thousand dollars, as set by rules of the commission promulgated

pursuant to chapter 1-26, proof of surety bond, and any other information as required by the director, by rule or order. Any licensee that files for renewal after June fifteenth and before July first shall pay a late fee in addition to the renewal fee. The late fee, not to exceed twenty-five percent of the renewal fee, shall be established by the commission in rules promulgated pursuant to chapter 1-26. After June thirtieth no license may be issued unless an application is filed pursuant to § 54-4-40.

Section 5. That § 54-4-48 be amended to read as follows:

54-4-48. The director may, ~~upon ten days notice to the licensee,~~ issue a cease and desist order from any practice that does not conform to the requirements set forth in §§ 54-4-36 to 54-4-63, inclusive, or ~~rules any commission rule adopted by commission, order, or condition imposed in writing, or any federal statute, rule, or regulation pertaining to consumer credit. A~~ cease and desist order may be issued to any licensee or to any person engaging in the business of lending money without a license. A licensee aggrieved by such order may appeal pursuant to chapters 1-26 and 1-26D.

Section 6. That § 54-4-49 be amended to read as follows:

54-4-49. The director may suspend or revoke a license for good cause pursuant to ~~chapter~~ chapters 1-26 and 1-26D. If the licensee is the holder of more than one license, the director may suspend or revoke any or all of the licenses. For purposes of this section, good cause includes any of the following:

- (1) Violation of any statute, rule, order, or written condition of the commission or any federal statute, rule, or regulation pertaining to consumer credit;
- (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
- (3) Performing an act of commission or omission or practice that is a breach of trust or

1 a breach of fiduciary duty.

2 Section 7. That § 54-4-50 be amended to read as follows:

3 54-4-50. An action may ~~also~~ be brought in circuit court by the attorney general or the
4 division, or both, to enjoin a licensee from engaging in or continuing a violation or from doing
5 any act in furtherance thereof. ~~In any action, an order or judgment may be entered awarding a~~
6 ~~temporary or permanent injunction.~~

7 Section 8. That § 54-4-57 be amended to read as follows:

8 54-4-57. The division ~~shall~~ may annually, or as often as the director considers necessary,
9 conduct an examination of business records and accounts of any licensee licensed under §§ 54-
10 4-36 to 54-4-63, inclusive. ~~The director may order an examination if circumstances require a~~
11 ~~special examination.~~ The director may charge back to the licensee any cost associated with an
12 on-site examination. The director may waive an on-site examination and only require an annual
13 self-examination. If a licensee conducts a self-examination, the licensee shall provide any
14 information requested under oath and on forms provided by the division by order or rule.

15 Section 9. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 If the division requires the production of records that are located outside this state, the party
18 shall either make them available to the division at a convenient location within this state or pay
19 the reasonable and necessary expenses for the division to examine them at the place where they
20 are maintained. The director may designate representatives, including officials of the state in
21 which the records are located, to inspect them on the director's behalf.

22 Section 10. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 A person licensed pursuant to this Act shall appoint a resident agent for service of process

1 and provide notice of such appointment to the director.

2 Section 11. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 A person licensed pursuant to this Act shall consent to be sued in the circuit courts of the
5 state for purposes of the director enforcing any provision of chapter 54-4 and any rules
6 promulgated pursuant to chapter 54-4. The consent to suit shall be demonstrated by the
7 execution and submission of a consent to suit form prepared by the director, with proof of
8 authority to consent and execute the form.